

PLANNING COMMISSION MINUTES OF JUNE 12, 2006

2006-0069 – KB Home [Applicant] **Anthony R Marques Trustee** [Owner]: Application for related proposals on a 3.6-acre site located at **1168 Aster Avenue** (near Lawrence Expressway) in an M-S/ITR/R-3/PD (Industrial & Service/Industrial to Residential/Medium-Density Residential/Planned Development) Zoning District. (Mitigated Negative Declaration) (APN: 213-01-015) SL;

- Special Development Permit to allow 80 condominium units,
- Tentative Map to subdivide one lot into 80 condominium units and 12 common lots

Steve Lynch, Senior Planner, presented the staff report. He said two items are provided on the dais. He said the first is a letter from Nicholas Petredis, the attorney representing Calstone, a neighboring business to the proposed development. He said the second item is the revised Attachment B, the Conditions of Approval (COAs). He said staff is recommending approval of the project with the revised COAs incorporated and is recommending that the Planning Commission recommend that staff pursue options with the adjacent property owner, Calstone/Peninsula Building Supplies, to help their business in regards to City noise standards. **Trudi Ryan**, Planning Officer, clarified for the Planning Commission that this item was on the agenda a month ago. She said staff became more aware of the situation regarding the business across the street, and returned to the applicant requesting modification to the previously provided acoustical study to assure that the noise environment information for the project had adequate detail for the Commission to consider this residential application.

Comm. Babcock referred to page 18, Alternative 5 of the staff report that directs staff to “work with the Calstone/Peninsula Building Supply owners to help their business meet the maximum allowed operations noise standards.” She asked staff to provide more detail about this direction and asked what time limit this would be accomplished in. Mr. Lynch said that staff is recommending that Calstone apply for a variance based on their use for exception to the noise standards. He said the way the code is currently written, that anytime a site converts to residential the adjacent industrial project needs to comply with the residential noise standards. Staff is recommending that the Planning Commission recommend that staff work with Calstone on a potential variance. He said part of the variance would be to complete a basic acoustical analysis showing what the existing noise levels are at the Calstone site. He said staff thinks it would take about eight weeks before the Planning Commission could review the variance. Ms. Ryan said that there may be other measures possible to help reduce the noise at the Calstone site. Comm. Babcock asked would the applicant be applying for a variance for the noise level that they are currently operating at. Ms. Ryan said she does not know what Calstone might request as their variance. Comm. Babcock asked if there were any grandfathering provisions when the current noise ordinance was adopted. Ms. Ryan

said the noise ordinance has been in place for a long time with several revisions, but that there are no provisions for pre-existing uses.

Comm. Klein referred to page 4 of the report saying that there seems to be a problem with this page. Staff confirmed that this was the wrong page of the report and said a corrected page 4 would be provided. Comm. Klein discussed with staff that a traffic impact fee would not be required for this development.

Comm. Sulser referred to Attachment B, page 10, COA 17 and asked why the section on trailers has been included on this residential project. Mr. Lynch said some residential developers have job trailers and these COAs assure that these temporary trailers be removed within a certain time frame. Comm. Sulser referred to Attachment B, page 10, COA 15.C and D. He said that both conditions seem to be the same. Ms. Ryan confirmed that these are duplicates.

Comm. Simons commented that there have recently been more projects requesting higher heights and encroachment on the average setbacks. He asked if there was any potential to gain frontage on Aster Avenue without increasing the height in this development. Mr. Lynch said any design is possible for consideration, but increasing the frontage may impact the number of units on project. Comm. Simons asked staff if the parking spaces could be compressed to gain space. Mr. Lynch said the Commission could direct staff to review this issue. Comm. Simons referred to the revised COA 4.A. and discussed with staff about roofing tiles and aesthetic equivalents. Staff confirmed that the intent of the COA is that a roof material similar to barrel tile, concrete tile or slate be provided.

Chair Hungerford confirmed with staff that the roads through the project are loop roads. Chair Hungerford said the lot coverage is 46% which is high and asked if comparable projects have been approved. Ms. Ryan said that this higher lot coverage is not typical, but that staff felt that the design would be providing more townhouse style units and the only way to reduce the lot coverage to the standard 40% would be to reduce the number of units. Ms. Ryan said the unit coverage is set primarily by the size of the garages. Chair Hungerford confirmed with staff that the proposed development is near the Caltrain station. Chair Hungerford asked if the proposed development had good interior noise abatement implementation measures, would the noise variance that staff is recommending the adjacent business apply for be affected. Staff said it could affect the variance and built in noise mitigation for the proposed development could mitigate the project up to the industrial noise level.

Chair Hungerford opened the public hearing.

James Lindsay, with KB Home South Bay, said he is very pleased to present the project. He requested a copy of the letter provided to the Commission this evening from Attorney Nicholas Petredis. He said this is KB Home's first project in Sunnyvale and explained more about KB Home and who they are as a company. He said that they operate in the United States and in France and were ranked as the

number one home builder of the national builders in the United States by Fortune magazine. He said they hope to deliver approximately 1200 homes in the Bay Area this year. He said that in Santa Clara County they build predominantly infill projects, due to the scarcity of land. He thanked staff for their assistance in this type of transitional area. He introduced several members of their project team to assist with any questions. He said that he recalled from the study session that the project was fairly well received, but there was concern about the color scheme requesting more variety. He presented a revised color scheme to the Commission. Mr. Lindsay referred to the acoustical report and summarized some of the conclusions. He said the major source of noise from Calstone, an industrial neighbor, is from the delivery vehicles coming in and out of the project rather than the manufacturing equipment. He indicated in his presentation the location of the proposed site and the location of adjacent neighbors. He said that the manufacturing sounds at the property line do not exceed what is allowable, but the peak noise events come from the trucks. He said they feel comfortable with the location they are building in and are providing sound mitigation measures by the style of windows used. He said that this development can provide housing close to work areas and many people chose these transitional environments to live closer to work. Mr. Lindsay said a couple of questions were brought up in the study session. He addressed the question about additional frontage along Aster Avenue saying that an earlier version of the project had more building setback along Aster. He said due to compliance with SB 1025, a new requirement on homebuilders to make to 10% of the units accessible to persons with disabilities, that a public walkway along southern property line must be provided. This walkway made the site tighter by pushing the entire project further towards Aster Avenue and causing less frontage on Aster Avenue. He said to add frontage on Aster Avenue now would result in the loss of units. Mr. Lindsay also addressed the issue of lot coverage. He said it is a higher density, but as staff pointed out that they are trying to provide the higher density, the 75%, due to the proximity to the train station. He said they have been able to exceed the open space requirement and meet the landscaping requirement. He said they have reviewed staff's modified conditions and are in agreement with them. He asked for one clarification on page two of Attachment B, COA 3.A.5, and said that CC&Rs are not usually signed by the customer, but a receipt or notice that they have received the CC&Rs is signed. He said the disclosure statement is signed by the customer and each page is initialed. He said they are supportive a staff's recommendations and are supportive of Calstone and their efforts to obtain the variance from the noise standard. He said as they become neighbors with industrial businesses they would like to completely mitigate for the impacts. He said they are not asking Calstone to change their operations in any way. He said he hopes the Planning Commission will provide direction to staff to work through the issue successfully.

Nick Petredis, attorney representing Calstone, noted that the Commission received a copy of the letter he provided to staff today. He said the letter is a detailed explanation of the issues they have identified and believe are justification for a continuance or denial of this application. He said the main issue precipitated by this application is what is the correct noise standard to apply to Calstone's industrial operations. He said until last Friday when they received the staff report, Calstone

believed it was subject to an industrial noise standard and had received assurances in the past of this from the City. Calstone also understood that the intent of the ITR zoning when enacted was that the industrial uses would remain unchanged while the residential infill occurred. He said Calstone does not have a problem with residential, but in this case the residential use is incompatible with the existing industrial use. Calstone takes its responsibility of being a good neighbor seriously and as long as it is held to the industrial use standard, it can continue to do business. He said because a particular use is permitted does not mean it should be approved. He said it appears to have been an oversight to not address this issue in the enactment of the ITR zoning. The assurance that Calstone previously had that they could continue to operate under industrial noise standards, seems to no longer be a valid policy interpretation. Mr. Petredis said Calstone would rather not be in this position of opposing this application, but until it receives solid assurances on the issue of noise standards it has no choice. He said they are open to alternatives and suggestions, but they need time.

Comm. Simons said he understands the concern about being impacted by noise issues with housing construction. Comm. Simons discussed the issue with Mr. Petredis and asked him if he had any other recommendations. Mr. Petredis reiterated that they would rather not be in this situation and that they are definitely interested in the variance procedure. He said they would act on the variance process as quickly as possible. Comm. Simons asked staff what amount of time would be required to process the variance. Ms. Ryan said it would take about five weeks from receipt of a complete application before the Planning Commission could review it. She noted it would take time to prepare the application and provide the acoustical information.

Comm. Babcock asked Mr. Petredis why they are opposing this particular development when there are already residential neighbors. Mr. Petredis said that this is the first time the noise standard has come up with residential development applications.

Mr. Petredis commented that it might take some time to get the acoustical study done and wanted to know if they could provide a conditionally complete application allowing the item could get on the agenda sooner while the acoustical analysis is being done. Ms. Ryan said the legal noticing for a project in Sunnyvale is tied up with the environmental review. She said in this circumstance that it could be problematic to do a conditionally complete application. Ms. Ryan said that staff would work with the applicant to get the variance application processed as soon as possible.

Comm. Simons asked if the variance would go with property. Ms. Ryan variance would go with the land, but with this type of use.

Patrick Morey, owner of Peninsula Building Materials that has been in business on Aster Avenue since 1968. He said he has enjoyed a great relationship with the City, but that he is very concerned about the livelihood of the business and the 32

employees. He said the staff report issued Friday has changed the ground rules that they have operated under for over 30 years. He said if they are held to residential rules then his business is in jeopardy. He said he is also concerned about traffic impacts with many trucks in the area now being mixed with kids playing in the area. He said this is a congested area and he is also concerned about the lack of parking. He said the traffic situation should be studied further before the Planning Commission takes action, but if the Commission takes action tonight he is requesting a continuance or a denial.

Chair Hungerford asked Patrick Morey if the trucks that pull into the area are their trucks. Mr. Morey said some of the trucks are theirs and also many other outside truck drivers.

Matt Morey, owner of Calstone Co., which has resided on the north side of this project for the past 34 years. He said they are a concrete product producer and run their operations seven days a week 24 hours a day. He said it is unclear at this point whether the project will impact the business. He said the ITR documents done in 1993 were clear that the properties surrounding the residential uses would not lose any of their current rights. He said they have had letters from Neighborhood Preservation allowing them to legally continue their operations, 24 hours a day, at the present noise levels. He said they did not take action opposing the other residential developments around them as the other development was responsible for mitigating Calstone's noise from the development. He said this report suggests to him that the new development would be subjected to higher noise levels, 60 or 70 decibels, and that the buyers would be aware through their CC&Rs that they would be subjected to the higher noise levels. He said as of last Friday, that instead of these past rules applying that Calstone now needs to abide by new residential noise standards. Mr. Morey said based on all the noise studies conducted in the last two years, they cannot operate under the new noise standards. He said they would be forced to close their business and all 130 employees would lose their jobs. He said this has been very confusing information that has been provided to them by the City. He said he has no problem working to resolve issues, but until the matter is settled, he is asking that the Planning Commission allow the applicant a continuance. He said if a continuance cannot be granted he is asking that the Commission deny the application for the sake of their business and the livelihood of their 130 employees and their families.

Eric Owens, an employee of Calstone, said he has worked for Calstone and Peninsula Building Supply for the past 21 years. He is married and has a child and he intends to work for Calstone until he retires. He said he is greatly concerned at the possibility of Calstone being forced out of business due to the residential developments in the area.

Bob Mureitta, an employee of Calstone for 23 years and is planning to work there until he retires. He is married with six children and extended family and due to the proposed residential development he may be forced out of business. He said he is very concerned at finding a new job at his age.

Mike Downey, an employee of Peninsula Building Supply for the past 20 years said he would like to continue working there until he retires. He is married and has children and he is very concerned about the proposed development possibly forcing Peninsula Building Supply out of business and how he would be able to continue his livelihood without this job.

Tom Morey said he has worked with Calstone since 1958. He said when the plant was built they obtained all the legal permits to operate 24 hours a day, seven days a week in Sunnyvale. He said the decision they learned about last Friday has him very confused.

Adam Morey representing JJ & W LLC, owners of the two properties occupied by Calstone and Peninsula Building Supply said they have been great tenants for several decades, and he is requesting denial of the proposed application, or continuance to allow time for the property owners to seek legal counsel as they did not receive notice of tonight's proceedings.

Tom Reagan, an employee of Peninsula Building Materials for 19 years, said that everyone seems concerned about the new buildings, but asked if anyone had thought about what would happen to the employees of the neighboring businesses if they lose their jobs.

Jose Luis Lazano, employee of Peninsula Building Supply, said he has family to support and friends who commute here from Los Banos, due to the cost of living in Sunnyvale just to work here. He said he and his friends rely on these jobs and that it is a great company to work for. He said if the City is concerned about the noise, that the nearby train also makes a lot of noise. He said he hopes to stay with this company for a long time.

Christopher Slack, spoke in support of Calstone and Peninsula Building and said that if we do not protect these businesses, and continue to fill in these areas with housing, how will people be able to afford to live here if they have no jobs.

Mr. Lindsay, reiterated their commitment for Calstone and Peninsula Building Supply to remain businesses in Sunnyvale for a long time to come. He said that the change in the noise ordinance he said that these businesses would be dealing with these issues whether KB Home were there or not. He said that with the continued effort to keep Calstone operating at their current noise standards he said he feels KB Home could fully mitigate the noise issues. He said a continuance would substantially impact them due to other commitments. He said he is asking the Planning Commission to make a decision tonight with an emphasis on Alternative 5. He asked if staff knew when the last noise complaint was filed. He said it is the truck traffic that is causing the most noise. He addressed the concern about traffic and said that he feels they will be generating less traffic than if another industrial business were there.

Comm. Simons asked Mr. Lindsay if this project were approved what would happen immediately. Mr. Lindsay said it is critical for KB Home to receive approval and a Tentative Map tonight. He said the work would begin in September at the soonest due to tenants and other procedures.

Chair Hungerford closed the public hearing.

Chair Hungerford asked staff if they knew when the last noise complaint was filed. Staff said it has probably been about 10 years since the last noise complaint.

Comm. Sulser asked staff what triggers the higher noise standard for the site. Mr. Lynch said that this standard comes from the zoning code. He said the industrial uses can go up to 75 decibels and for uses adjacent to residential it is 60 decibels in the day and 50 decibels at night. Mr. Lynch said the current code has not changed recently.

Comm. Simons asked staff about the transition for this area to ITR. He said there may be a problem beyond this situation and there may be other businesses that will also be affected. Ms. Ryan said this issue could be looked as an ITR issue, and there may need to be a policy solution made to modify the noise sub-element. Comm. Simons said the Alternative 5 directs staff to work with the owners to help the businesses meet the optimum noise standard. Ms. Ryan said the suggestion for a variance is one of many options and the changing of policies would be something the Council would look at normally in December through the Study Issue process. Ms. Ryan said that businesses that have outdoor operations will struggle more with the noise issue than businesses indoors.

Chair Hungerford said that noise from the trucks are the issue. Ms. Ryan said these companies do not have total control over the trucks because they do not own them. Chair Hungerford asked if it would be possible to redirect the trucks. Staff said no and that there is a provision in the code that allows the truck deliveries that existed prior to 1995, to deliver at night to sites. These particular truck deliveries are grandfathered in for particular sites, but the lesser noise standard still applies.

Comm. Babcock moved for Alternative 2 and Alternative 5 to adopt the Mitigated Negative Declaration and approve the Special Development Permit (SDP) and Tentative Map with the revised Conditions of Approval (COAs) that were provided on the dais by staff this evening and to direct staff to work with the Calstone/Peninsula Building Supply owners to expedite the Variance application for this company to operate at the industrial noise level that they are currently operating under. Comm. Simons offered a friendly amendment to direct staff to reexplore the maximum amount of frontage that could be added to Aster Avenue; Comm. Babcock confirmed that this is not a requirement, but to reexplore the possibility of increasing the frontage. **Comm. Babcock accepted the friendly amendment.** Comm. Simons offered a friendly amendment to modify the SDP to allow KB Home to move forward prior to the approval of the variance for Calstone/Peninsula Building Supply as the expedited variance might still

take some time. Comm. Babcock said she would like to see the development move forward, but that the friendly amendment is tying up too many timelines. Ms. Ryan said that approval of one project cannot be conditioned upon the approval of another project. **Comm. Simons offered a friendly amendment to modify Alternative 5 to include** direction to staff to request that City Council update the ITR's unintentional noise restriction impacts on local businesses that should be grandfathered into the noise restriction. Ms. Ryan paraphrased the friendly amendment, **that Alternative 5 include direction to staff to recommend that the City Council consider immediate steps regarding noise issues related to ITR sites. Comm. Babcock accepted the friendly amendment. Comm. Simons offered a friendly amendment to modify COA 9.G to include that the new trees installed "be large species native trees as appropriate for each tree's placement on the site" Comm. Babcock accepted the friendly amendment. Comm. Klein added that COA 15. C and D are duplicates and one would need to be modified. Comm. Babcock and Comm. Simons agreed. Comm. Simons seconded the motion.**

Comm. Babcock said this was a difficult and easy situation and the same time. She said the KB Home development is an excellent development and has the right to be at the proposed location, yet at the same time the Planning Commission needs to protect the rights of an industry that has been in Sunnyvale for many years that has not had complaints about them. She said Calstone and Peninsula Building Supply should be considered to be able to operate under the industrial noise levels. She said she hopes to see the variance application expedited and come back to the Planning Commission for decision as soon as possible. She added that Calstone and Peninsula Building Supply have operated next to residential for a long time and have not abused the situation.

Comm. Simons said he has great concerns that another ITR noise conflict situation has occurred. He said he thinks the Planning Commission should not have to hear any further ITR noise conflicts and that existing industry in ITR zones should be grandfathered in on noise issues. He said he would not support a residential development that might jeopardize a business that has been in the City as long as Calstone. He said he is supporting this motion with the intent being to move forward on the residential development and that the problem regarding noise restrictions be mitigated as soon as possible.

Chair Hungerford said he agrees that this is a tough decision. He said the Planning Commission cares about the companies and employees neighboring the proposed development. He reiterated to staff the need to expedite the noise variance application as soon as possible to allow neighboring companies to continue to operate at their current noise levels. He said this residential project should not affect the neighboring companies. He said the applicant is installing mitigation measures that should protect residents that buy into this project.

ACTION: Comm. Babcock made a motion on 2006-0069 to adopt the Mitigated Negative Declaration and approve the Special Development Permit (SDP) and Tentative Map with the revised Conditions of Approval (COAs) as provided by staff; to direct staff to work with the Calstone/Peninsula Building Supply owners to expedite the Variance application for this company to operate at the industrial noise level that they are currently operating under; to direct staff to reexplore the maximum amount of frontage that could be added to Aster Avenue; to direct staff to recommend that the City Council consider immediate steps regarding noise issues related to Industrial to Residential (ITR) sites; to modify COA 9.G to include that the new trees installed “be large species native trees as appropriate for each trees placement on the site”; and to combine COA 15.C and D as they duplicates. Comm. Simons seconded. Motion carried unanimously, 6-0.

APPEAL OPTIONS: This item is appealable to City Council no later than June 27, 2006.